

STATE OF MICHIGAN
COURT OF APPEALS

In re MONTGOMERY/FULTZ, Minors.

UNPUBLISHED

June 14, 2016

No. 329637

Wayne Circuit Court

Family Division

LC No. 13-514280-NA

Before: JANSEN, P.J., and O’CONNELL and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her child, KF, under MCL 712A.19b(3)(a)(ii) (desertion), and to both KF and another child, KM, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

Respondent argues that she had a constitutional right to parent her children, and, therefore, the trial court erred in terminating her parental rights. We disagree.

Respondent did not preserve this issue by raising any constitutional challenge in the trial court. Therefore, the issue is unpreserved, and we review it for plain error affecting substantial rights. See *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

In terminating respondent’s parental rights to KF under MCL 712A.19b(3)(a)(ii), the trial court observed that respondent abandoned the child and that the grandmother who previously cared for him was “apparently not willing to do things anymore because I don’t know of her ever coming to court.” With respect to both children, the court terminated parental rights under MCL 712A.19b(3)(c)(i), explaining that in addition to respondent’s lack of suitable housing, there were also “problems with parenting.” On this last point, the court noted that respondent tried to pick which children she wanted to parent and make relatives care for the others. With respect to both KF and KM, the court determined that MCL 712A.19b(3)(g) applied because respondent did not have a suitable home, was a threat to abandon her children, and could not develop the skills to care for the children within a reasonable time. As for MCL 712A.19b(3)(j), the court explained that the best evidence of possible harm is how a parent “treated other children,” and the casefile relating to respondent’s three older children showed that respondent “has not done what she needed to do.” The court again reiterated that respondent abandoned KF and appeared to want others to care for her children. The trial court also determined that termination was in

the best interests of KF and KM. On appeal, respondent argues that the trial court did not adequately consider her constitutional right to parent her children.

“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). In Michigan, there are procedures in place, as outlined through statute and court rule, to ensure that a parent who faces termination of her parental rights receives due process of law. *In re Rood*, 483 Mich 73, 93; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). The child protective proceedings include an adjudicative phase, in which the court determines whether it may take jurisdiction over the child, and a dispositional phase, in which the court determines what action it will take to ensure the well-being and safety of the child. *In re Sanders*, 495 Mich 394, 404-407; 852 NW2d 524 (2014). This case proceeded to a termination hearing. Our Supreme Court has held that once the petitioner presents clear and convincing evidence that persuades the court that at least one statutory ground to terminate parental rights exists, “the liberty interest of the parent no longer includes the right to custody and control of the children.” *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 812 (2013). “Similarly, once at least one ground for termination is proven . . . the parent’s interest in the companionship, care, and custody of the child gives way to the state’s interest in the child’s protection.” *Trejo*, 462 Mich at 356.

The relevant subsections of MCL 712A.19b under which respondent’s parental rights were terminated read as follows:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under either of the following circumstances:

* * *

(ii) The child’s parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

We first note that respondent does not challenge the adjudication, the statutory grounds for termination, or the trial court's best-interest determination. In addition, respondent does not raise a challenge to the procedures involved in the termination of her parental rights to KF and KM. The record shows that there was an adjudication, as well as a termination hearing. At the end of the hearing, the court determined by clear and convincing evidence that there were statutory grounds to terminate respondent's parental rights, and by a preponderance of the evidence that termination was in the best interests of the children. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Respondent's argument that the trial court erred for the sole reason that respondent has a constitutional right to parent her children is without merit.

Respondent contends that there were no issues of drug use, lack of housing, or lack of income. Respondent's assertions regarding drug use and income are irrelevant because these issues were not discussed by the court as the reasons for terminating her parental rights. Furthermore, contrary to respondent's argument, there was ample evidence that she continued to lack suitable housing. Respondent's caseworker testified that she observed several people enter and exit respondent's home when she arrived to inspect it, and respondent could not explain their presence at the home. The caseworker further testified that respondent claimed to be the sole occupant of the home, but the caseworker found a person named "Fred" present in the home when she arrived to inspect it, and he indicated that he did reside there. The caseworker also reported that the home was infested with gnats and had no working smoke or carbon monoxide detectors. There was a "vicious dog" living in the house, which had not been vaccinated. In fact, the caseworker testified that respondent told her that she felt the home was not safe, and she did not want her children living in the home. Therefore, the court did not err in considering respondent's lack of housing in determining that MCL 712A.19b(3)(c)(i) and (g) were proven by clear and convincing evidence.

Respondent also argues that the court failed to consider that she had the right to appoint a guardian for her children and that there was no need to involve KF, who was in the care of his grandmother, in the termination proceeding. To the extent that respondent argues that petitioner did not adequately investigate potential relative placement options pursuant to MCL 722.954a once the children were removed, the record shows that petitioner did investigate possible placement options with respondent's relatives pursuant to MCL 722.954a, but none of them were found to be a suitable placement at that time, particularly because the family members initially

denied knowing where KF was and “appeared to be covering for” respondent. With regard to respondent’s argument that there was a proper placement option with her sister, there was testimony that respondent’s sister failed to contact petitioner after petitioner conducted a home assessment, there were problems with the home of respondent’s sister and it was unclear whether those problems were resolved, and respondent’s sister did not earn enough income to care for the children and was not a licensed foster-care provider, which would permit her to receive support from the state. Thus, respondent’s sister was not a proper placement option at the time of termination. To the extent that respondent argues that KF was under a legal guardianship, there was evidence that KF was previously under a guardianship that expired in 2014. There was no indication that the grandmother or any other relative had legal custody of KF, and, instead, he was passed from relative to relative.

Respondent cites *In re Moore*, 134 Mich App 586, 601-602; 351 NW2d 615 (1984), for the proposition that a parent does not neglect a child by seeking temporary placement with a relative or a social services agency. But respondent did not seek to place KF temporarily with a relative. Respondent testified that she was incarcerated when she gave birth to KF, her mother and aunt took him from the hospital after birth, and she believed her mother or her friend were his guardians. When asked whether she attempted to gain custody of KF after being released from prison, she asserted that she “couldn’t be around my kids because of my charges.” KF’s foster-care worker stated that when asked with whom he previously stayed, KF responded that he “doesn’t know because he’s moved around a lot and was with different people.” According to the foster-care worker, KF could not name any of his caregivers. Particularly telling about respondent’s attitude toward KF, as well as KM, was the caseworker’s testimony that respondent’s parenting class instructor had “no idea” that KM and KF existed. Furthermore, respondent expressed her disinterest in caring for KF and KM and her desire to have relatives care for them. In short, respondent’s argument that KF was temporarily placed with relatives during a temporary hardship is dubious. Rather, the record supports the court’s conclusion that she abandoned the boy. Because petitioner presented clear and convincing evidence that at least one statutory ground to terminate existed, “the liberty interest of [respondent] no longer includes the right to custody and control of the children.” See *In re Trejo*, 462 Mich at 355.¹

¹ We note that respondent does not challenge on appeal the trial court’s decision regarding the statutory grounds for termination or the best interests of the children. However, even if we were to review the issue, we would not find clear error in the trial court’s determination that MCL 712A.19b(3)(a)(ii) was proven by clear and convincing evidence with regard to KF, MCL 712A.19b(3)(c)(i), (g), and (j) were proven by clear and convincing evidence with regard to both children, and a preponderance of the evidence supported a finding that termination was in the best interests of the children. See *In re White*, 303 Mich App 701, 709, 713-714; 846 NW2d 61 (2014).

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Riordan